

in the stock form, provided the necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this chapter. The acquired holding company may be held as a subsidiary of the mutual holding company or merged into the mutual holding company.

(5) *Non-controlling acquisitions of savings association stock.* A mutual holding company may acquire non-controlling amounts of the stock of savings associations and savings and loan holding companies subject to the restrictions imposed by 12 U.S.C. 1467a(e) and (q) and §§ 574.8 and 584.4 of this chapter.

(6) *Other corporations.* A mutual holding company may acquire control of, and make non-controlling investments in the stock of, any corporation other than a savings association or savings and loan holding company only if:

(i) (A) Such corporation is engaged exclusively in activities that are permissible for mutual holding companies pursuant to § 575.11(a) of this part; or

(B) It is lawful for the stock of such corporation to be purchased by a federal savings association under § 545.74 of this chapter or by a state savings association under the law of any state where any subsidiary savings association of the mutual holding company has its home office; and

(ii) Such corporation is not controlled, directly or indirectly, by a savings association subsidiary of the mutual holding company.

(b) *Dispositions*—(1) A mutual holding company shall provide written notice to the OTS at least 30 days prior to the effective date of any direct or indirect transfer of any of the stock that it holds in a resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company, including stock transferred in connection with a pledge pursuant to § 575.11(b) of this part or any transfer of all or a substantial portion of the assets or liabilities of any such association. Any such disposition shall comply with the requirements of this part or with part 563b of this chapter, as appropriate, and with any other applicable statute or regulation including, without limitation, parts 546, 563 and 574 of this chapter.

(2) A mutual holding company may, subject to applicable laws and regulations, transfer any or all of the stock or cause or permit the transfer of any or all of the assets and liabilities of:

(i) Any subsidiary savings association that was in the stock form when acquired, provided such association is not a resulting association or an acquiree association;

(ii) Any subsidiary savings and loan holding company acquired pursuant to paragraph (a)(4) of this section; or

(iii) Any corporation other than a savings association or savings and loan holding company.

(3) A mutual holding company may, subject to applicable laws and regulations, transfer any stock acquired pursuant to paragraph (a)(5) of this section.

(4) No transfer authorized by this section may be made to any insider of the mutual holding company, any associate of an insider of the mutual holding company, or any tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company unless the mutual holding company provides notice to the OTS at least 30 days prior to the effective date of the proposed transfer. This notice shall be in addition to any other application or notice required under applicable laws or regulations, including, without limitation, this part and parts 563, 563b, 574 of this chapter.

[58 FR 44114, Aug. 19, 1993, as amended at 60 FR 66720, Dec. 26, 1995]

§ 575.11 Operating restrictions.

(a) *Activities restrictions.* A mutual holding company may engage in any business activity specified in 12 U.S.C. 1467a (c)(2)(A) or (c)(2)(C)–(c)(2)(G). In addition, the business activities of subsidiaries of mutual holding companies may include the activities specified in § 575.10(a)(6) of this part. A mutual holding company or its subsidiaries may engage in the foregoing activities only upon compliance with the procedures specified in §§ 584.2–1(c) or 584.2–2(b) of this chapter.

(b) *Pledging stock*—(1) No mutual holding company may pledge the stock of its resulting association, an acquiree association, or any subsidiary savings association that was in the mutual

form when acquired by the mutual holding company unless the proceeds of the loan secured by the pledge are infused into the association whose stock is pledged. Any amount of the stock of such association may be pledged for this purpose. Nothing in this paragraph shall be deemed to prohibit:

(i) The payment of dividends from a subsidiary savings association to its mutual holding company parent to the extent otherwise permissible; or

(ii) A mutual holding company from pledging the stock of more than one savings association subsidiary provided that the stock pledged of each such subsidiary association is proportionate to the proceeds of the loan infused into each subsidiary association.

(2) Within ten days after any pledge of stock pursuant to paragraph (b)(1) of this section, a mutual holding company shall provide written notice to the OTS regarding the terms of the transaction (including the amount of principal and interest, repayment terms, maturity date, the nature and amount of collateral, and the terms governing seizure of the collateral) and shall include in such notice a certification that the proceeds of the loan have been transferred to the subsidiary savings association whose stock has been pledged.

(3) Any mutual holding company that fails to make any payment on a loan secured by the pledge of stock pursuant to paragraph (b)(1) of this section on or before the date on which such payment is due shall, on the first day after such payment is due, provide written notice of nonpayment to the Regional Director.

(c) *Restrictions on stock repurchases.* No subsidiary savings association of a mutual holding company that has any stockholders other than the association's mutual holding company shall repurchase any share of stock within three years of its date of issuance, unless the repurchase:

(1) Is part of a general repurchase made on a *pro rata* basis pursuant to an offer approved by the OTS and made to all stockholders of the association (except that the association's mutual holding company may be excluded from the repurchase with the OTS's approval);

(2) Is limited to the repurchase of qualifying shares of a director; or

(3) Is purchased in the open market by a tax-qualified or non-tax-qualified employee stock benefit plan of the association in an amount reasonable and appropriate to fund such plan.

(d) *Restrictions on waiver of dividends.* No mutual holding company may waive its right to receive any dividend declared by a subsidiary unless either:

(1) No insider of the mutual holding company, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company holds any share of stock in the class of stock to which the waiver would apply; or

(2) The mutual holding company provides the OTS with written notice of its intent to waive its right to receive dividends 30 days prior to the proposed date of payment of the dividend, and the OTS does not object. The OTS shall not object to a notice of intent to waive dividends if:

(i) The waiver would not be detrimental to the safe and sound operation of the savings association; and

(ii) The board of directors of the mutual holding company expressly determines that waiver of the dividend by the mutual holding company is consistent with the directors' fiduciary duties to the mutual members of such company. A dividend waiver notice shall include a copy of the resolution of the board of directors of the mutual holding company, in form and substance satisfactory to the OTS, together with any supporting materials relied upon by the board, concluding that the proposed dividend waiver is consistent with the board's fiduciary duties to the mutual members of the mutual holding company.

(e) *Restrictions on issuance of stock to insiders.* A subsidiary of a mutual holding company that is not a savings association may issue stock to any insider, associate of an insider or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company or any subsidiary of the mutual holding company, *provided that* such persons or plans provide written notice to the OTS at least 30 days prior to the stock issuance. Subsidiary savings associations may issue stock to

such persons only in accordance with § 575.7 of this part.

(f) *Restrictions on indemnification.* The provisions of § 545.121 of this chapter shall apply to mutual holding companies in the same manner as if they were federal savings associations.

(g) *Restrictions on employment contracts.* The provisions of § 563.39 of this chapter and any policies of the OTS thereunder shall apply to mutual holding companies in the same manner as if they were savings associations.

(h) *Applicability of rules governing savings and loan holding companies.* Except as expressly provided in this part, mutual holding companies shall be subject to the provisions of 12 U.S.C. 1467a and 3201 *et seq.* and parts 563e, 574, 583, and 584 of this chapter.

[58 FR 44114, Aug. 19, 1993, as amended at 60 FR 66720, Dec. 26, 1995]

§ 575.12 Conversion or liquidation of mutual holding companies.

(a) *Conversion—(1) Generally.* A mutual holding company may convert to the stock form in accordance with the rules and regulations set forth in part 563b of this chapter.

(2) *Exchange of savings association stock.* Any stock issued pursuant to § 575.7 of this part by a subsidiary savings association of a mutual holding company to persons other than the parent mutual holding company may be exchanged for the stock issued by the mutual holding company in connection with the conversion of the holding company to stock form provided that the holding company and the subsidiary savings association demonstrate to the satisfaction of the OTS that the basis for the exchange is fair and reasonable.

(b) *Involuntary liquidation—(1)* The OTS may file a petition with the federal bankruptcy courts requesting the liquidation of a mutual holding company pursuant to 12 U.S.C. 1467a(o)(9) and title 11, United States Code, upon the occurrence of any of the following events:

(i) The default of the resulting association, any acquiree association, or any subsidiary savings association of the mutual holding company that was in the mutual form when acquired by the mutual holding company;

(ii) The default of the mutual holding company; or

(iii) Foreclosure on any pledge by the mutual holding company of subsidiary savings association stock pursuant to § 575.11(b) of this part.

(2) Except as provided in paragraph (b)(3) of this section, the net proceeds of any liquidation of any mutual holding company shall be transferred to the members of the mutual holding company in accordance with the charter of the mutual holding company.

(3) If the FDIC incurs a loss as a result of the default of any savings association subsidiary of a mutual holding company and that mutual holding company is liquidated pursuant to paragraph (b)(1) of this section, the FDIC shall succeed to the membership interests of the depositors of such savings association in the mutual holding company, to the extent of the FDIC's loss.

(c) *Voluntary liquidation.* The provisions of § 546.4 of this chapter shall apply to mutual holding companies in the same manner as if they were federal savings associations.

§ 575.13 Procedural requirements.

(a) *Proxies and proxy statements—(1) Solicitation of proxies.* The provisions of §§ 563b.5 and 563b.6 of this chapter (exclusive of § 563b.6(c)(2)(iii), (d), and (e)) shall apply to all solicitations of proxies by any person in connection with any membership vote required under this part. All proxy materials utilized in connection with such solicitations shall be authorized for use by the OTS and shall be in the form and contain the information specified in § 563b.5(d) of this chapter and Form PS, 12 CFR 563b.101, to the extent such information is relevant to the action that members are being asked to approve, with such additions, deletions, and other modifications as are necessary or appropriate under the disclosure standard set forth in § 563b.5(g) of this chapter. Proxies and proxy statements shall be filed in accordance with § 563b.5(e) of this chapter and shall be addressed to the Corporate and Securities Division, Chief Counsel's Office, Office of Thrift Supervision, at the address set forth in § 516.1(a) of this chapter. For purposes of this paragraph (a)(1), the term *conversion* as it appears in the provisions